

AI in the Workplace: Protecting Employee Well-being

This WorkCare Fact Sheet summarizes recent guidance and directives from the U.S. Department of Labor and other federal government agencies on the use of artificial intelligence (AI) in the workplace and protections for employees.

There is a blend of urgency, anxiety and excitement around the arrival of artificial intelligence (AI)-driven processes in the workplace. The Biden Administration, U.S. Department of Labor (DOL) and other government agencies have responded with directives and guidance to help employers navigate AI deployment without harming the well-being of employees or violating their employment rights.

Executive Order

The Biden Administration issued an [*Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*](#) on Oct. 30, 2023. Under the executive order:

- AI must be safe and secure, including the use of labeling and provenance mechanisms to identify AI-generated content.
- Robust, reliable, repeatable and standardized systems, policies and institutions must be used to track performance and mitigate risks.
- Investments in AI-related education, training, development, research and capacity are needed, as well as effective measures to protect intellectual property, inventors and creators.
- AI will not be deployed in the workplace in ways that undermine employees' rights, worsen job quality, encourage undue worker surveillance, lessen market competition, introduce new health and safety risks, or cause harmful labor-force disruptions.
- The use of AI to disadvantage vulnerable populations or deny equal opportunity and justice for all will not be tolerated.

DOL Principles

In response to the Executive Order, the DOL released [*Artificial Intelligence and Worker Well-being: Principles for Developers and Employers*](#) on May 16, 2024, to address anticipated benefits and potentially harmful impacts of AI-driven technology on employees. The DOL's principles focus on the potential for AI to "spur innovation, advance opportunity, and transform the nature of many jobs and industries while also protecting workers from the risk that they might not share in these gains."

AI is expected to generate new types of jobs, including professions involved in the development, deployment and human oversight of AI applications.



According to the DOL, AI may be used to positively augment work by:

- Replacing/automating repetitive tasks
- Assisting employees with routine decisions
- Redirecting skilled employees to other responsibilities
- Creating demand for employees to learn how to use AI in their daily work

AI-augmented processes also pose risks, such as the potential for declines in work quality and morale when employees respond to loss of autonomy or fear of job loss.

“The risk of AI for workers is greater if it undermines workers’ rights, embeds bias and discrimination in decision-making processes, or makes consequential workplace decisions without transparency, human oversight and review,” the DOL states.

The DOL principles are intended to provide an AI-use framework for all types of industries. AI developers and employers are advised to review and customize best practices based on their own operations and goals. Employee input is strongly encouraged. The principles include:

1. **Empowerment:** Workers and their representatives, especially those from underserved communities, should be informed of and have genuine input into the design, development, testing, training, use and management of AI systems in the workplace.
2. **Ethical development:** AI systems should be designed and implemented in ways that protect workers.
3. **Oversight:** Organizations should have clear governance systems, procedures, human oversight and evaluation processes for AI systems in the workplace.
4. **Transparency:** Employers should be transparent with workers and job seekers about the AI systems that are being used in the workplace.
5. **Employee rights:** AI systems should not violate or undermine workers’ rights to organize, their health and safety, or their wage-and-hour rights; they should include anti-discrimination and anti-retaliation protections.
6. **Enhancement:** AI systems should assist, complement and enable workers, and improve job quality.
7. **Support:** Employers should support and/or upskill workers during AI-related job transitions.
8. **Data protection:** Workers’ data collected, used or created by AI systems should be limited in scope and location and only used to support legitimate business aims; data should be protected.

Definitions

Artificial intelligence (AI) is a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments.

An *AI model* is a component of an information system that implements AI technology and uses computational, statistical or machine-learning techniques to produce outputs from a given set of inputs.

AI systems use machine- and human-based inputs to perceive real and virtual environments, abstract such perceptions into models through analysis in an automated manner, and use model inference to formulate options for information or action.

Generative AI is a class of AI models that emulate the structure and characteristics of input data in order to generate derived synthetic content. This includes images, videos, audio, text and other digital content.

Machine learning is a set of techniques that train AI algorithms to use data that will improve performance.

Synthetic content includes images, videos and text that has been significantly modified or generated by algorithms.

Source: [Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence](#)

Joint Statement

Prior to outlining these principles, the DOL joined with other federal agencies on April 3, 2024, in the release of a [Joint Statement on Enforcement of Civil Rights, Fair Competition, Consumer Protection, and Equal Opportunity Laws in Automated Systems](#). The statement expresses a commitment to Americans to adhere to core principles of fairness, equality and justice in the use of emerging technologies.

It states that “innovation and adherence to the law can complement each other and bring tangible benefits to people in a fair and competitive manner, such as increased access to opportunities as well as better products and services at lower costs.” However, it also notes that these systems have the “potential to perpetuate unlawful bias, automate unlawful discrimination and produce other harmful outcomes.”

Concerns highlighted in the joint statement include:

- Use of data and datasets that are unrepresentative or imbalanced, incorporate historical bias or contain other types of errors that can contribute to discrimination.
- Automated systems that correlate with data associated with protected classes, creating the potential for discriminatory outcomes.
- System “black boxes” that lack transparency and make it difficult for developers, businesses and individuals to know whether an automated system is fair.
- Risk for developers to design a system on the basis of flawed assumptions about its users, relevant context, or the underlying practices or procedures it may replace.

Certain legal authorities already apply to the use of automated systems and innovative technologies. Here are some examples from the joint statement:

- The DOL’s Office of Federal Contract Compliance Programs has updated its compliance review process to require documentation to better identify discrimination related to AI and automated systems in recruitment, screening and hiring by federal contractors.
- The Consumer Financial Protection Bureau is considering rulemaking to help prevent misuse of Americans’ sensitive information by data brokers.
- The Department of Justice’s Civil Rights Division has confirmed that the Fair Housing Act applies to algorithm-based tenant screening services. The Civil Rights Division’s Consumer Protection Branch is leading efforts to investigate and prosecute crimes involving the use of generative AI.
- The Equal Employment Opportunity Commission is investigating workplace discrimination claims related to the use of AI and automated systems in hiring and job placement. It is taking enforcement actions, as warranted. (Refer to [technical guidance](#).)



- The Federal Trade Commission recently banned a company from using AI-based facial recognition technology for employee surveillance due to improper deployment; the company was required to implement comprehensive safeguards. The commission has also required firms to destroy algorithms and other work products that misused data.
- The Department of Education’s Office for Civil Rights investigates allegations concerning the discriminatory use of automated systems in educational technologies and takes enforcement action, as warranted.
- The Department of Health and Human Services’ Office for Civil Rights is finalizing a rule to interpret [Section 1557 of the Affordable Care Act](#) to prevent AI-powered algorithms from contributing to bias and discrimination in health care. Its Office of the National Coordinator for Health Information Technology recently published a rule to support algorithmic transparency in electronic health records.
- The Department of Homeland Security refers to [Policy Statement 139-06, Acquisition and Use of Artificial Intelligence and Machine Learning by DHS Components](#) as its foundation for the use of AI. It prescribes that the department will not collect, use or disseminate AI-generated data based on inappropriate consideration of race, ethnicity, gender, national origin, religion, sexual orientation, gender identity, age, nationality, medical condition or disability.
- The Department of Housing and Urban Development enforces fair housing laws to ensure that automated systems are used to increase economic opportunity on an equitable basis and prevent AI-driven applications from being used disproportionately to deny access to housing.

Next Steps

When implementing AI solutions in the workplace, employers are advised to be cautious with regard to the data they collect and use to support their business objectives. Attorneys recommend having policies in place, including expectations for use and potential consequences for misuse. Mitigation measures may include plans to address cybersecurity threats, AI vendor audits, and training for human resource professionals and managers on the use of AI in hiring.

When AI systems violate or undermine employees’ inherent or statutory legal rights, lawsuits are likely to follow. In addition to federal mandates and guidelines, states are also developing legislation to regulate the use of AI in the workplace. Keeping pace with these developments may require the assignment of a workplace oversight group that includes executives, front-line employees, human resources and information technology team members in consultation with legal counsel, as needed.

